

**INITIAL STATEMENT OF REASONS
REGARDING
EMPLOYEE HOUSING FEE INCREASES
TITLE 25, DIVISION 1, CHAPTER 1
SUBCHAPTER 3: EMPLOYEE HOUSING
ARTICLE 4: PERMITS AND FEES AND COMPLIANCE**

The Administrative Procedure Act (APA) requires that an Initial Statement of Reasons be available to the public upon request when rulemaking action is being undertaken. The following information required by the APA pertains to this particular rulemaking action:

Subject Matter of Regulations:

The Department of Housing and Community Development proposes to amend sections 637 and 644 of the Employee Housing Program regulations located in the California Code of Regulations, title 25, division 1, chapter 1, subchapter 3. This regulatory action proposes to modify the Employee Housing Program regulations by increasing the issuance fee, the permit fees for each employee housed (per bed) and lot provided and fees for exemptions, amendments, and inspections.

Sections Affected:

The Department of Housing and Community Development proposes to amend sections 637 and 644 of the Employee Housing Program regulations located in the California Code of Regulations, title 25, division 1, chapter 1, subchapter 3.

Background

The Division of Codes and Standards (Division), which is within the Department of Housing and Community Development (Department), administers the Employee Housing Program (EHP) through the Employee Housing Act, which is located in the Health and Safety Code (HSC) beginning at section 17000. The regulations adopted under the Employee Housing Act for the EHP are located in the California Code of Regulations, title 25, division 1, chapter 1, subchapter 3.

The EHP, which is effective statewide, preempts all local regulations and provides for the maintenance, use, and occupancy of “employee housing.” The EHP does not regulate all “employee housing” but only that housing which accommodates 5 or more employees or in certain circumstances five or more farmworkers in rural areas as both are defined in HSC section 17008. In general, the EHP does not regulate employee housing that is government owned

or operated migrant worker facilities. The program also does not regulate housing maintained in connection with horse racing facilities or "Employee Community Housing" of at least 200 single-family dwellings of four or more rooms owned and maintained pursuant to the State Housing Law by the employer. Properly maintained permanent housing, including manufactured homes and mobilehomes on a dairy farm, may also be exempt from the annual permit activity requirements of the EHP. The EHP also does not regulate housing provided by a public or private school, or any city, county, state, or federal agency.

The Department is the enforcement agency under the EHP, unless a local jurisdiction elects to assume enforcement responsibility pursuant to HSC section 17050(b). Enforcement typically consists of inspecting and issuing permits for the operation of employee housing subject to the EHP and includes identifying facilities, citing violations, and enforcing compliance. The purpose of the EHP is to benefit the employees and their families by providing a decent living environment throughout the enforcement of rules and regulations that provide for the health, safety, and general welfare of the residents.

The EHP's regulations include specific requirements such as the maintenance of grounds, buildings, sleeping space, and the facilities' sanitation and heating systems. The program also provides technical services and assistance, including on-site inspections. Whether or not the local government assumes jurisdiction, all local governments are required under the EHP to enforce construction requirements for permanent buildings and other structures at the facilities and for the installation of manufactured housing at employee housing facilities subject to the EHP.

The Division believes that approximately 75-80% of persons occupying employee housing facilities regulated under the EHP are migrant agricultural workers, moving from farm-to-farm as the work connected with agricultural changes throughout the growing season. Because of the seasonal harvest activity and the state's broad geographical areas and scattered locations of growing areas, workers relocate frequently to where the work is located. Accordingly, much of the employee housing is often operational only on a seasonal basis standing vacant for months. Depending on rotation of crops or sometimes the practice of letting a season pass without planting crops, some employee housing might become "inactive" without being dismantled.

The Division believes there is a growing problem for the migrant agricultural workers in finding available housing or affordable housing as they move from farm-to-farm through the growing season, which can only be solved through strict enforcement of the EHP. The Division believes that this problem has resulted in

workers living in “illegal encampments” under unsafe and unhealthy living conditions. It also appears that dilapidated housing and sheds are used for employee housing. The Division also believes that farm labor contractors arrange housing in motels and other forms of housing or have employees “camp,” almost none of which are permitted or inspected for health and safety conditions.

Problem Addressed by this Rulemaking

The problem addressed by the proposed fee increases is to make the EHP fully fee supported by fiscal year 2004-2005 due to an anticipated loss of General Fund appropriations that currently subsidize the Department’s annual required budget needed to operate its portion of the EHP.

For the budget year 2001-02 the Department’s estimated portion of the EHP required a total of \$1,152,078 funds to operate. This total operating budget was funded with \$193,078 (17% of *annual total*) of collected fees with the balance subsidized with \$959,000 (83% of *annual total*) of General Fund appropriations. It is anticipated that the General Fund appropriation will be reduced in the 2003-04 budget to \$220,000 and eliminated entirely from the 2004-05 budget.

To make the Department’s EHP fully fee supported by fiscal year 2004-2005 the fees in Table 1 above are proposed to be increased. The fee rate increases are based on generating additional fees to compensate for the loss of the 2001-02 General Fund appropriations.

The proposed fee increases will also increase the fees collected by local jurisdiction that have assumed enforcement responsibility of the EHP. The Department’s data used in the 2001 Statistical Summary for the EHP showed that the affected local governments regulated 590 employee housing facilities with 12,509 beds and 562 lots subject to the statewide EHP. Using these estimated numbers of units, the proposed fee increases will provide local governments with an additional \$1,075,588 per year in fees. This estimate may be high because some local jurisdictions have increased their EHP fees above the existing fee schedule located in sections 637 and 644 of the EHP regulations.

The statewide effect of the proposed fee increases on employee housing facilities subject to the statewide EHP will be an increase in fees of approximately \$2,005,520 [\$929,932 from the Department and \$1,075,599 from the local government EHP’s]. If each facility were assumed to have the same number of beds and lots, the average fee increase per facility would be \$1,724 per year (i.e., \$2,005,520 divided by 1,163 facilities). This estimate is based on the statewide EHP (i.e., from both the Department’s and local government’s EHP), which consists of 1,163 employee housing facilities with a total of 23,647 beds and 762 lots used for mobilehome or recreation vehicles by the employees.

It is uncertain as to the number of employees affected by the proposed fee increases because the Department's database for the EHP does not report the number of employees subject to the program; it only reports the use of beds and lots. The Department believes that 75-80% of employees subject to the EHP are migrant agricultural workers that are expected to move from one facility to another throughout the growing season. A range of employees subject to the EHP could be a range from 23,647 employees assuming one bed used per employee use to 7,882 employees based on each employee using 3 different facilities per year (23,647 beds / 3 uses per employee).

STATEMENTS OF SPECIFIC PURPOSE AND RATIONALE:

1. Amend Section 637. Permit to Operate or Exemption Fees.
2. Amend Section 644. Reinspection Fees.

Specific Purpose of Each Adoption, Amendment, or Repeal

The specific purpose of the proposed changes in sections 637 and 644 is to increase the existing fee rates with the proposed fee rates shown in the table below. These fee increases are designed to generate additional revenue to fully fund the Department's EHP by offsetting an anticipated loss of \$959,000 to the EHP operating budget, which is subsidized from the state's General Fund appropriations (based on fiscal year 2001-02).

Proposed Fee Rate Increases

<u>Fee Items</u>	<u># Of Units¹</u>	<u>Fee Rates</u>		<u>Estimated Annual Fee Collected</u>
		<u>(Existing²)</u>	<u>Fully Funded</u>	
Beds	11,138	(\$12/bed)	\$90/bed	1,002,420
Lots	200	(\$12/bed)	\$90/lot	18,000
Issuance	573	(\$35/permit)	\$170/amend	97,410
Amendment	20	(\$20/amend)	\$40/permit	800
Inspections ³	210	(\$60 for 1 st hr)	\$120 for 1 st hr	
			\$75/additional hrs	
		(\$30 up to 1/2 hr)	\$38 up to 1/2 hr	27,300
				Total = \$1,145,930

- Notes:
1. Estimates based on EHP 2001-02 Fiscal year number of units.
 2. Existing fees as specified in sections 637 and 644 of the California Code of Regulations, title 25, division 1, chapter 1, subchapter 3.
 3. Estimate includes all inspections and reinspections except first inspection related to PTO issuance.

Why Each Adoption, Amendment, or Repeal Is Necessary

It is necessary to increase the fees in sections 637 and 644 to make the Department's EHP fully fee supported by fiscal year 2004-05 due to the anticipated loss of \$959,000 in funding from the state's General Fund

appropriations in fiscal year 2005-05. Without increasing fees to offset this anticipated loss, there will be insufficient funding resulting in the inability of the Department to fulfill its statutory obligation under the Employee Housing Act.

The operation of the EHP is necessary to assure that critical health and safety provisions are in place for employees who annually use approximately 11,138 beds in 573 facilities in the Department's portion of the statewide EHP. Unhealthy and unsafe living conditions for employees would impact California's farm industry with sick or unhealthy workers. There would be an increase in, and continued use of, existing "illegal encampment" that would impact on the workers and their families, the general public, and agricultural products due to unregulated health and safety living conditions. There would also be adverse impacts for employees' and other children as a result of sick children—either attending or missing school due to living in unhealthy and unsafe living conditions.

Time studies were performed to determine the actual cost of the process for the inspection and reinspection fee. The Department has determined that the cost function for inspection and reinspection must include travel time to and from the facility. The travel time only pertains to the first hour as it includes the average statewide travel time per inspection. The additional hours and partial hours for inspection and reinspection are less because they do not include travel.

DETERMINATIONS

Technical, theoretical, and empirical studies, reports, or similar documents used; Underlying Data: (Technical, theoretical or empirical studies or reports relied upon, if any):

The Department relied on funding data from the 2001-02 General Fund appropriations for the Employee Housing Program. Other numbers were derived from the Department of Finance and data from the Codes And Standards Automated System (CASAS) data system.

Specific Technologies or Equipment: None

Consideration of Reasonable Alternatives:

The Department has determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome than the proposed action.

The only reasonable alternative the Department has evaluated was not increasing fees to offset the potential funding lost due to the elimination of General Fund Appropriation. This Department has determined that this option is not reasonable and would result in insufficient funding to administer and enforce the statutory mandated Employee Housing Act.

Insufficient funding would result in the inability of the Department to fulfill its statutory obligation of assuring that critical health and safety provisions are in place for employees and their families. Unhealthy and unsafe living conditions for employees would impact California's farm industry with sick or unhealthy workers. There would be an increase in, and continued use of, existing "illegal encampment" that would impact the workers and their families, the general public, and agricultural products due to unregulated health and safety living conditions. There would also be adverse impacts for employees' children as a result of sick children—either attending or missing school due to living in unhealthy and unsafe living conditions.

Business Impact: The types of businesses that could be affected by these regulations would be employee housing facilities subject to the EHP. The EHP does not regulate all "employee housing" but only that housing which accommodates 5 or more employees or in certain circumstances 5 or more farmworkers in rural areas as both are defined in HSC section 17008. In general, the EHP does not regulate employee housing that is government owned or operated migrant worker facilities. The program also does not regulate housing maintained in connection with horse racing facilities or "Employee Community Housing" of at least 200 single-family dwellings of four or more rooms owned and maintained pursuant to the State Housing Law by the employer. Properly maintained permanent housing, including manufactured homes and mobilehomes on a dairy farm may also be exempt from the annual permit activity requirements of the EHP. The EHP also does not regulate housing provided by a public or private school, or any city, county, state, or federal agency.

The purpose of the proposed fee increases is to make the Department's EHP fully fee supported by fiscal year 2004-2005 by increasing fees by approximately 1 million dollars per year. This fee increase proposal will also increase the fees collected by local jurisdictions that have assumed enforcement because many use the same fee schedules in section 637 and 634 (i.e., approximately half of the statewide EHP). It has been estimated that these local jurisdiction will collect an additional 1 million dollars per year in fees. This equates to an average increase for businesses of \$1,724 per year per facility based on 1,163 facilities regulated under the EHP.

There may be direct and indirect effects of such a large fee increase if costs are passed on or if some facilities choose to discontinue providing employee housing and/or choose not to build new employee housing. There may be an affect on

the creation of, or cause the elimination of, jobs within the State of California associated with labor contractors, support functions for the employee housing or with the design, construction, maintenance and operations of employee housing facilities. The fee increases may also discourage the expansion or creation of new jobs related to labor contractors, support functions for the employee housing or with the design, construction, and operations of new employee housing facilities.

The proposed fee increases may adversely affect the creation of new businesses or the elimination of existing businesses within the State of California. There is a potential that those businesses that currently support labor contractors, support functions for the employee housing, or that design and build employee housing, such as the recently built Napa Yurt Village in Napa County, will lose business to facilities that choose to discontinue providing employee housing and/or choose not to build new employee housing. Those businesses that provide services to existing or new employee housing may also face similar adverse effects.

Those businesses associated with labor contractors, support functions for the employee housing or with the design, construction, or operations of employee housing may lose their ability to expand their businesses if existing employee housing facilities choose to discontinue providing employee housing and/or choose not to build new employee housing.

Reasonable Alternatives Identified That Would Lessen Any Adverse Impact on Small Business.

The Department has not identified any reasonable alternatives that would lessen any adverse impact on Small Businesses that operate employee housing. See “Consideration of Reasonable Alternatives” above.

Effect on Private Persons:

The Department has made an initial determination that the proposed fee increases will have a significant cost impact on representative private persons that operate or provide support services for employee housing facilities subject to the EHP and that must absorb the fee increases. As discussed above, the proposed fee increases will require persons or businesses that operate employee housing subject to the EHP to sustain fee increases of approximately 2 million dollars per year in the current fees paid to the Department’s and local jurisdiction’s EHP.

The Department has made an initial determination that the proposed fee increases may have a significant effect on employees that are under the jurisdiction of the statewide EHP. As discussed in an example in section F3 of the Notice, there could be approximately 7,882 to 23,647 employees affected by the fee increases if the fee increases are passed on as rent increases to the employees. If the total fee increases are passed on as rent increases, the

employees would absorb rent increases (*(23,647 beds x \$90/bed fee increase) divided by 7,882 employees*) of approximately \$270 per year. However, if there are 15,000 employees, the rent increase would be \$142 per year. As discussed above, the Department's record does not record the number of employees subject to the statewide EHP. Another adverse affect on employees would occur if the facilities eliminated their employee housing, thus, causing the employees to find higher cost alternative housing such as motels or hotels.